Filed 6/2/09 In re A.M. CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re A.M., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. A.M., Defendant and Appellant.	A122315 (Solano County Super. Ct. No. J37380)

POLLAK, J.— A.M. appeals from the dispositional order of the juvenile court in these delinquency proceedings, challenging both the jurisdictional order and the terms of the disposition. He argues that statements he made to police while in custody were not voluntary and were erroneously admitted in evidence, and that the court improperly limited the scope of its review of police officer personnel records under *Pitchess v. Superior Court* (1984) 11 Cal.3d 531 (*Pitchess*). We conclude that the trial court did not err in admitting the statements or in its review of the officer's records, but agree with A.M. that the court should not have stated a maximum term of confinement. We therefore shall remand the case for correction of the record.

BACKGROUND

On March 15, 2007, a petition under Welfare and Institutions Code section 602, subdivision (a) was filed alleging that A.M. committed assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1).) A.M. admitted to the allegation as a misdemeanor and

was committed to the juvenile hall for three days, with credit for three days. On April 6, 2007, A.M. was placed on probation, subject to a search condition and conditions that he not associate with gang members, wear gang clothing or emblems, or possess gang paraphernalia.

On December 17, 2007, another petition was filed under Welfare and Institutions Code section 602, subdivision (a) alleging that A.M. had violated court orders (Welf. & Inst. Code, § 777, subd. (a)(2)) by associating with gang members and possessing gang paraphernalia. He admitted the allegations and on January 23, 2008, he was again placed on probation. The search and gang conditions were reimposed.

On January 30, 2008, the current petition under Welfare and Institutions Code section 602, subdivision (a) was filed, alleging that A.M. possessed ammunition for the benefit of a criminal street gang (Pen. Code, §§ 12101, subd. (b)(1), 186.22, subd. (d)), carried a switch blade knife (Pen. Code, § 653k), and violated a court order (Welf. & Inst. Code, § 777, subd. (a)(2)) by associating with gang members. He denied the allegations.

At the current jurisdictional hearing, Detective Todd Tribble, whom the court qualified as an expert on gangs, testified that on January 29, 2008, he went to A.M.'s house to perform a probation search. He found items that he "believed to be gang-related, such as belts with specific buckles and blue bandanas, and . . . a . . . compact disk with gang-style writing scrawled on it. [¶] . . . [¶] The fact that they are blue bandanas. [A.M.] has been validated on prior occasions as a member of the Sureno Criminal Street Gang, and blue is a common color worn and displayed by members of this gang." One of the buckles had "BCL" written on it, which "relates to a subset of the Sureno Criminal Street Gang operating in the City of Vallejo known as Brown Crowd Locos." A second buckle had the letter "M" on it, which Tribble testified "represents the Mexican Mafia, and oftentimes Sureno gang members will show allegiance to the Mexican Mafia by wearing tattoos or clothing items with the letter 'M' on them."

Tribble found a clear plastic bag containing "ammunition of varying calibers" on the floor between the washing machine and the north wall of the house. He postulated, based on his training and experience, that A.M. was holding the ammunition for older

gang members. He also posited that A.M. had the belt buckles, the blue bandanas, and the ammunition "to benefit not only the gang, but to benefit himself within the gang, his position in the gang."

During an interview at the police station following A.M.'s arrest, under circumstances described more fully below, Tribble asked A.M. about gang affiliation. "He . . . wavered between admitting he was a full member or just an associate or affiliate. Though I had contacted [A.M.] on previous occasions with other validated gang members in the City of Vallejo and that I knew him to be a validated member, he did not consider himself to be a full-fledged member of BCL or the Surenos because he, in his words, claimed not to have been jumped in. . . . He admitted that his moniker within the gang was . . . Clownie. [¶] . . . [¶] He claimed the ammunition had been given to him to hold by an older gang member who he named as either Little Michael or Little Whisper. He mentioned both names, but he could not recall which name was most applicable." Tribble had not been able to find someone who went by either of those names. He testified that A.M. told him he had the BCL belt buckle "to show his affiliation with Brown Crowd Locos."

A.M. presented no witnesses at the jurisdictional hearing. His attorney argued that his confession was involuntary and that without the confession "there is no evidence that he even knew that the ammunition was in the house. His statement that it belonged to some Little Michael or Little Whisper, the district attorney's own witness stated he doesn't know who that individual is. [A.M.] did not know the ammunition was there and out of desperation he said what he said. [¶] . . . [¶] . . . [A]s to count three, I submit on the evidence."

The court found the first allegation, that A.M. possessed ammunition and that it was for the benefit of, at the direction of, or in association with a criminal street gang, to be true. The court did not sustain the allegation regarding possession of the knife because the statute requires that the knife be in a car or public place and there was no evidence that either of those was true. Finally, the court sustained the allegation that A.M. had violated the probation order of April 6, 2007, by associating with gang members.

On August 6, 2008, at the dispositional hearing, the court continued A.M. as a ward in the custody of his parents and under the supervision of the probation department. The court deemed the first count a felony and found the gang enhancement true. It stated that "the minor's maximum period of confinement is three years, four months." A.M. was given custody credit for 200 days. A.M. has timely appealed.

DISCUSSION

Motion to suppress

At the jurisdictional hearing, A.M. moved to suppress the statements he made while in custody on the ground that they were involuntary. "On appeal, the determination of a trial court as to the ultimate issue of the voluntariness of a confession is reviewed independently in light of the record in its entirety, including 'all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation' [citation]. [Citations.] [¶] The trial court's determinations concerning whether coercive police activity was present, whether certain conduct constituted a promise and, if so, whether it operated as an inducement, are apparently subject to independent review as well. The underlying questions are mixed; such questions are generally scrutinized de novo; that is especially true when—as here—constitutional rights are implicated [citation]). [¶] Lastly, the trial court's findings as to the circumstances surrounding the confession—including 'the characteristics of the accused and the details of the interrogation' [citation]—are clearly subject to review for substantial evidence. The underlying questions are factual; such questions are examined under the deferential substantial-evidence standard.' " (*People v. Benson* (1990) 52 Cal.3d 754, 779.)

"An involuntary confession, of course, is inadmissible under the due process clauses of both the Fourteenth Amendment [citation] and article I, sections 7 and 15" of the California Constitution. (*People v. Benson*, *supra*, 52 Cal.3d at p. 778.) "It long has been held that the due process clause of the Fourteenth Amendment to the United States Constitution makes inadmissible any involuntary statement obtained by a law enforcement officer from a criminal suspect by coercion. [Citations.] A statement is involuntary [citation] when, among other circumstances, it 'was " 'extracted by any sort

of threats . . . , [or] obtained by any direct or implied promises, however slight. . . .' " ' [Citations.] Voluntariness does not turn on any one fact, no matter how apparently significant, but rather on the 'totality of [the] circumstances.' " (*People v. Neal* (2003) 31 Cal.4th 63, 79.)

However, there must be a strong causal connection between the improper police behavior and the confession. "A confession is 'obtained' by a promise within the proscription of both the federal and state due process guaranties if and only if inducement and statement are linked, as it were, by 'proximate' causation. . . . The requisite causal connection between promise and confession must be more than 'but for': causation-in-fact is insufficient. [Citation.] 'If the test was whether a statement would have been made but for the law enforcement conduct, virtually no statement would be deemed voluntary because few people give incriminating statements in the absence of some kind of official action.' " (*People v. Benson, supra,* 52 Cal.3d. at pp. 778-779.)

"[A] minor has the capacity to make a voluntary confession, even of capital offenses, without the presence or consent of counsel or other responsible adult, and the admissibility of such a confession depends not on his age alone but on a combination of that factor with such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement." (*People v. Lara* (1967) 67 Cal.2d 365, 383.) "Among the circumstances emphasized by the courts as tending to show that the minor possessed the capacity required to make a voluntary confession are his prior experience with the police and courts [citations] and the fact that advice as to his legal rights was given to him before he confessed." (*Id* at p. 385.)

A.M. testified on the limited issue of the voluntariness of his statements while in custody. He stated that when he arrived at the police station he "was put in a cell," and that he "was cold." He stated, "I was wearing some shorts and an under white T," and that he felt "cold, hungry and scared." He believed that he waited for "like an hour" before he was taken to a room to be interviewed. The officer who interviewed him "was like yelling at me. [¶] Q. . . . [¶] A. About like deporting me and my family with the hold paper. [¶] Q. . . . [¶] A. He took the hold paper and went like this (indicating) and showed

me the hold thing and the ICE thing, and what it meant and everything. [¶] Q. . . . [¶] A. I was like scared . . . [b]ecause I didn't want my family deported. [¶] Q. . . . [¶] A. I started talking to him, the officer." A.M. did not request that his parents be present.

Tribble advised A.M. of his *Miranda* rights on at least one occasion. He testified inconsistently that he "first advised [A.M.] of his *Miranda* rights while he was at his residence in front of Special Agent Kennedy while he was being detained." In answer to the question, "When was the first time you read him his *Miranda* rights?" he stated, "[t]he first time was at the Vallejo Police Department." Tribble stated that A.M. indicated he understood his rights and waived them. A.M. does not dispute that he was advised of his rights before he spoke. Tribble knew that there was an immigration hold that applied to A.M., but he did not recall whether he told A.M. about the hold. Asked if he remembered showing A.M. the ICE hold document, Tribble answered, "I don't, but I may have." A.M.'s attorney then asked, "Do you remember telling the minor that if he didn't cooperate with you and give you the answers [you] wanted that he was going to get deported to Pakistan?" and "Do you remember telling him if he didn't cooperate and give you the answers you wanted, his whole family would in fact be deported to Pakistan?" Tribble replied, "No."

In denying the motion to suppress A.M.'s statement, the juvenile court found that "[h]e was 16 at the time of this particular event. . . . He has been before this court before. He is a ward of the court. He is aware of things like probation, the consequences of the offenses, the nature of the proceedings, so the court certainly doesn't have to take judicial notice of that, because as both attorneys who are before this court are well aware, and [A.M.] is well aware, I've heard his case. . . . Here, by the minor's account, he was at the station approximately no more than an hour before this officer, Officer Tribble, came in to speak with him, and the circumstances of his statement were taken over a 20- to 30-minute time period. So we're not talking about a two- to three-hour confession in the middle of the night; we're talking about a 20- to 30-minute interview by a police officer sitting at a police station for approximately one hour. So there is nothing inherently coercive about those circumstances. The minor was already subject to an ICE hold at the

time. Certainly I'm sure that that was an upsetting factor to him but, nevertheless, that was a factor that went beyond the control of Detective Tribble. . . . Detective Tribble didn't say, 'If you tell me something, I will remove the ICE hold.' There [are] no improper inducements on his part. . . . [L]et's assume the officer said, '[A.M.], you are going to go to Pakistan. Your family is at risk. They may go to Pakistan. You all may be deported because of this behavior.' It's nothing but a statement of fact of what already happened in the hands of a federal agent, and so on all of those circumstances, I don't find that is involuntary."

The Attorney General argues that, regardless of the voluntariness of the statement, any error in the admission of A.M.'s statements was harmless beyond a reasonable doubt because without the statement there was ample evidence that he possessed the ammunition and associated with a gang. As to the first allegation, without A.M.'s statements there is no evidence that the ammunition was in his possession or that he held it for the benefit of a gang. The ammunition was not found in A.M.'s room and nothing connected it to A.M. or the gang besides his statement. Therefore the resolution of A.M.'s appeal turns on whether the statements were voluntary.

The fact that A.M was held for an hour, during which time he was "cold and hungry," does not rise to a level of coercion that renders his statement involuntary. Nothing in the record suggests that A.M. was subjected to more than minor discomfort. Other than A.M.'s assertion that he was "cold" (and as he stated in his declaration in support of his *Pitchess* motion, placed in a "freezing cell"), there is no confirmation that the temperature in the police station was significantly below the normal comfort zone, and the trial court appears to have rejected any such suggestion. A.M. may have been "hungry" but there is no indication that he was deprived of nourishment for longer than the normal span between meals. There is substantial evidence that A.M. was held for only an hour before police questioned him and that the interrogation lasted no more than half an hour. He did not ask to have a parent present, nor did he testify that he requested food or additional clothing, or was denied access to the toilet. In *People v. Maestas* (1987) 194 Cal.App.3d 1499, a 17-year-old suspect was held for over seven and a half hours and was

offered food only after he gave an incriminating statement. The court held that these far more extreme circumstances did not render the confession involuntary.

As to the alleged threat of deportation, "The courts have prohibited only those psychological ploys which, under all the circumstances, are so coercive that they tend to produce a statement that is both involuntary and unreliable." (*People v. Ray* (1996) 13 Cal.4th 313, 340.) Tribble testified merely that he did not remember what he told the minor regarding his immigration status. Even accepting A.M.'s version of events, the conduct was not so extreme as to render his statements involuntary. In *Maestas*, the police threatened the minor that he " 'might be certified to adult court and sent to state prison unless he talked.' " (*People v. Maestas, supra*, 194 Cal.App.3d at p. 1506.) The court held that the police "did not cross the line into impermissible behavior. The information provided appellant did not amount to trickery or dishonesty, but an attempt to describe appellant's real situation." (*Ibid.*) Here, A.M. did not testify that Tribble threatened to deport him if he did not speak with him, nor did he testify that Tribble suggested that he and his family might be spared deportation if he confessed. At most, A.M. was told his "real situation," but he was neither duped nor coerced into speaking with the officer.

A.M. cites no cases in which a similar set of circumstances has been held to render a statement involuntary. In *Neal*, which he cites for the proposition that a statement is involuntary when "it 'was " 'extracted by any sort of threats . . . , [or] obtained by any direct or implied promises, however slight' " ' " (*People v. Neal, supra,* 31 Cal.4th at p. 79), the circumstances leading to the defendant's involuntary confession included "the officer's deliberate violation of *Miranda*; defendant's youth, inexperience, minimal education, and low intelligence; the deprivation and isolation imposed on defendant during his confinement; and a promise and a threat made by the officer" (*id.* at p. 68). The officer "continued interrogation in deliberate violation of *Miranda* in spite of defendant's invocation of both his right to remain silent and right to counsel" (*id.* at pp. 80-81) approximately seven to 10 times, promised to "make it as best as I can for you" if the defendant confessed, and threatened that "the system is going to stick it to you

as hard as they can" if he did not (*id.* at p. 81). The defendant in that case made his confession only "after a night in custody without access to counsel or other noncustodial personnel and without food or drink or toilet facilities." (*Id.* at p. 82.)

As the trial court observed, A.M. was 16 years old at the time and had been detained for delinquent behavior before. He had some understanding and experience with police procedures and there is no evidence that he is of below-average intelligence. Viewing the totality of the circumstances, we reach the same conclusion as did the trial court, that A.M.'s statements to Tribble were voluntary and properly admissible.

Pitchess motion

A.M. made a motion pursuant to *Pitchess* asking for "all reports, documents, or other evidence o[r] complaints of: aggressive conduct, unnecessary violence, unnecessary force, false arrest, false statements in reports, false claims of probable cause, false claims of disability, false time cards, any conduct arguably evidencing moral turpitude, or any other evidence of or complaints of dishonesty by Police Officer T. Tribble . . . of the Vallejo Police Department." The motion asked for complaints "indicating or constituting racial prejudice, dishonesty, false arrest, illegal search and seizure, the fabrication of charges and/or evidence by" Officer Tribble.

The declaration in support of the *Pitchess* motion stated that A.M. "was arrested outside of his home on January 29, 2008. [A.M.] was then taken to the Vallejo Police Station in his sleeping shorts and undershirt and placed in a freezing cell for a few hours. [A.M.] was then taken to an interview room and interrogated by the officer involved. During the interview, the officer repeatedly threatened [A.M.] that he and his family faced deportation. The officer even placed the immigration papers on the desk and repeatedly hammered down his hand on them while interrogating and threatening [A.M.] [A.M.'s] statement that he possessed ammunition was given as a result of these coercive interrogation tactics and was involuntary. The officer also fabricated evidence by noting in the police report that [A.M.] considered himself to be a member of a street gang called BCL. [A.M.] never stated that he was a member, but rather explained that he was not a member because he was never initiated into the gang. The officer also noted that [A.M.]

stated that he kept a gold butterfly/gravity knife next to his bed for protection. [A.M] never stated that the knife was for protection, but rather that it was for collection."

In opposition, the City Attorney asserted that A.M failed to allege good cause for the discovery sought.

The trial court ruled that "There is a sufficient basis for me to conduct an in-camera hearing for a limited area of inquiry in this particular matter, based on the showing of the minor. It's the court's belief that this in-camera hearing will be restricted to any claims of false arrest, illegal search and seizure, fabrication of charges and/or evidence, and although it is a close call, I will consider any issues of excessive force that may be raised and judged with those areas. As to the other areas raised by the moving parties, I don't see any plausible justification for any claim with respect to racial prejudice, as asserted as one of the areas of inquiry, and if any evidence is released, it will be released as to the names and addresses of the complaining parties, at least initially. There is not a plausible justification for anything beyond that on the initial level of inquiry. As to documentation regarding moral laxity or other issues raised in the pleadings, I don't see a plausible justification for those releases at this time, nor do I see any legal justification for disclosure of any discipline proceedings, because again, discipline proceedings in the court's mind are not relevant to this inquiry yet."

The court then took a recess to review the records. Following an in camera hearing the court stated that it had "identified records that are going to be released pursuant to an appropriate protective order for your evaluation."

A *Pitchess* motion may be brought in juvenile proceedings. (*City of San Jose v. Superior Court* (1993) 5 Cal.4th 47.) "To determine whether the defendant has established good cause for in-chambers review of an officer's personnel records, the trial court looks to whether the defendant has established the materiality of the requested information to the pending litigation. The court does that through the following inquiry: Has the defense shown a logical connection between the charges and the proposed defense? Is the defense request for *Pitchess* discovery factually specific and tailored to support its claim of officer misconduct? Will the requested *Pitchess* discovery support the

proposed defense, or is it likely to lead to information that would support the proposed defense? Under what theory would the requested information be admissible at trial? If defense counsel's affidavit in support of the *Pitchess* motion adequately responds to these questions, and states 'upon reasonable belief that the governmental agency identified has the records or information from the records' ([Evid. Code,] § 1043, subd. (b)(3)), then the defendant has shown good cause for discovery and in-chambers review of potentially relevant personnel records of the police officer accused of misconduct against the defendant." (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1026-1027.)

A.M. cites *People v. Hustead* (1999) 74 Cal.App.4th 410 in support of his contention that records pertaining to racial prejudice and moral laxity were relevant to his defense. In that case the defendant was charged with evading arrest. The trial court denied a *Pitchess* motion that sought records pertaining to the arresting officer's use of excessive force and history of misstating or fabricating facts in police reports. The court of appeal held that the motion was properly denied as to claims of excessive force, but should have been granted as to records pertaining to the fabrication of facts. The court reasoned that the allegations made by the defendant in his motion "demonstrated that appellant's defense would be that he did not drive in the manner suggested by the police report and therefore the charges against him were not justified." (*Id.* at p. 417.)

In *Larry E. v. Superior Court* (1987) 194 Cal.App.3d 25, also cited by A.M., the minor was accused of interfering with a peace officer Harris in the discharge of his duties and battery on that peace officer, in an incident witnessed by an officer Loomis. The appellate court's opinion describes the attorney's affidavit seeking personnel records of both officers as alleging that minor "would deny using force against the officers at the time of his arrest but, rather, would establish that the officers had used unnecessary force against him. [¶] Additionally, the affidavit set forth minor's contention that the officers lied about having seen him toss the plastic bag containing cocaine and the minor's claim that the drug had been planted on him. The affidavit also stated that the material sought would assist minor in establishing that, a week prior to his arrest, minor had been beaten by both officers and that Officer Loomis had held a gun to his head. Accordingly, the

discovery request was justified as being relevant to the officers' propensity to engage in improper acts and excessive violence. [¶] The affidavit also claimed that the information sought might establish racial or class bias on the part of the officers or demonstrate that the officers may have had a motive to lie about the circumstances of minor's arrest." (*Id.* at p. 28.) In reversing the trial court's denial of the minor's *Pitchess* motion seeking broad information concerning complaints against the nonvictim Officer Loomis "for acts of aggressive behavior, violence or excessive force, improper police tactics, dishonesty and racial or class prejudice" (*ibid.*), the court held that, as reflected in the arrest report, "the actions of Officers Harris and Loomis were inextricably intertwined in the altercation which is the basis of two of the charges against" the minor, so that "Officer Loomis's personnel records are, therefore, properly discoverable as being relevant to the issue of self-defense, notwithstanding amendment of the petition to delete Loomis's name" (*id.* at p. 32).

Here, Officer Tribble's personnel files were potentially relevant to the credibility of his testimony concerning the circumstances surrounding A.M.'s custodial statements and regarding the search of the house, the items found there and his opinion that those items were gang-related. However, unlike in *Hustead,* A.M.'s defense is not that he did not possess the ammunition or that it was not for the benefit of a gang. Rather, his defense rested on exclusion of his statements that established these things because, he argued, those statements were not voluntary. This court has independently reviewed the records produced in the trial court for the *Pitchess* motion and, with the exception of the report that the trial court ordered produced to A.M., we agree that these records have no relevance to A.M.'s assertion that he was treated harshly. Even if the trial court improperly limited the scope of its review of the documents by refusing to look for claims of racial bias, our independent review reveals no such records. Therefore, the trial court did not err in failing to release more than the single incident report.

Statement of the maximum term

Finally, A.M argues that the court erroneously designated his maximum period of confinement. Welfare and Institutions Code section 726, subdivision (c) provides that the

maximum period of confinement should be set only when "the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602." The Attorney General concedes the error, but argues that it has no legal effect, citing *In re Ali A.* (2006) 139 Cal.App.4th 569, 571, where the court held that because the minor was not in custody, setting a maximum term of confinement was "of no legal effect." A.M. responds that the maximum period of confinement may have an effect in any deportation proceedings and therefore renews his request that we order the juvenile court to correct its dispositional order. He argues that "[v]acating the maximum term of confinement would prevent any misunderstanding among other governmental agencies that do not understand that the term is of no legal effect. This is especially important since any immigration counsel retained by [A.M.'s] family is unlikely to be intricately familiar with juvenile delinquency proceedings . . . ." The minor's showing of prejudice appears highly speculative. Nonetheless, we can perceive no good reason for preserving an erroneous record and failing to reflect the disposition correctly. Correcting the record involves little burden and entails no prejudice to the interests of the public. Hence, we believe that the correction should be made.

DISPOSITION

The judgment is affirmed and the matter is remanded to the juvenile court to correct the dispositional order to reflect no maximum term of confinement.

McGuiness, P. J., and Siggins, J., concurred.